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DETAINED

Attorneys for Petitioner **Thi Thuy Vinh Nguyen**

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

12 In the matter of:

13 THI THUY VINH NGUYEN

15 v.
16 CHRISTOPHER LAROSE,
17 WARDEN OF OTAY MESA
18 DETENTION CENTER

) Case Number:

) A 

) 3:26-cv-02749-BAS-VET

) NOTICE OF MOTION AND
) MEMORANDUM
) OF LAW IN SUPPORT OF
) TEMPORARY
) RESTRAINING ORDER

) Challenge to Unlawful Incarceration;
) Request for Declaratory and
) Injunctive Relief

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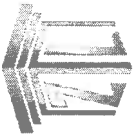
**NOTICE OF MOTION AND MEMORANDUM OF LAW IN SUPPORT OF
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STATEMENT OF FACTS

1. Petitioner is a native and citizen of Vietnam who entered the United States on December 1, 2024. Since that date, Petitioner has remained in continuous immigration custody, and as of today, has been detained for approximately sixteen (16) months without release. **See Exhibit “A” (Notice to Appear).**
2. On November 6, 2025, the San Diego Immigration Court granted Petitioner Withholding for Vietnam of Removal pursuant to INA § 241(b)(3). The Department of Homeland Security (DHS) did not appeal this decision, and Petitioner's order of removal therefore became final on that same date. **See Exhibit “3” to Petition, ECF Docket No. 1.**
3. Despite the grant of Withholding of Removal and the absence of any appeal by DHS, Respondents are now deporting her to Vietnam.
4. Respondents transferred Petitioner, and she is now in Arizona Airport waiting to be deported to Vietnam.
5. Petitioner was detained at the Otay Mesa Detention Center, CA at the time of filing the Habeas Petition.
6. Nonetheless, Respondents transferred Petitioner to Arizona, without notice to this Court, resulting to loss of jurisdiction while pending the Court’s resolution of the Petition.

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1 7. Respondents blatantly disregard instant Petition and transferred
2 Petitioner while it's pending, and yet plan to deport Petitioner to Vietnam,
3 NOW, May 1, 2026, while she has a withholding from Vietnam.
4

5 8. As such, Petitioner respectfully asks this Court to maintain status quo and
6 transfer the Petitioner to Otay Mesa Detention Facility in California, or in the
7 alternative, grant Petitioner's Petition for Writ of Habeas Corpus and order
8 immediate release to avoid unreasonable and prejudicial delays and
9 Respondent's tactics to delay the process in bad faith.
10

11
12 9. Despite being represented, neither Petitioner nor Petitioner's counsel were
13 provided a notice of Respondents' intent to remove her from the United States.
14

15 10. As such, Petitioner faces immediate irreparable harm: removal from the United
16 States to an unknown country.
17

18 11. The requested temporary restraining order ("TRO") would preserve the status
19 quo while Petitioner litigates these claims under this Court's judgment, by
20 prohibiting the government from moving Petitioner out of the country during
21 the pendency of this litigation, potentially depriving this Court of jurisdiction,
22 and by providing specific forms of due process to which Petitioner is entitled
23 during her removal to Vietnam, for which she received a withholding.
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A. Current ICE policy allows third country removals to happen within 24 hours of notice of the country of removal

19. On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a “meaningful opportunity” to assert claims for protection under the Convention Against Torture before initiating removal to a third country.” (July 9, 2025, ICE third-country removal guidance). Now, ICE may remove any immigrant to a third country without any notice. It may do so if, in the sole view of the State Department, the United States has received “credible” “assurances” from that country that deportees will not be persecuted or tortured. *Id.* at 1.

20. If a country fails to credibly promise not to persecute or torture releasees, ICE may remove immigrants with only 24 hours’ notice. “In exigent circumstances,” a removal may take place in six hours, “as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal.” *Id.*

21. Under this policy, ICE “will not affirmatively ask whether the alien is afraid of being removed to the country of removal.” *Id.* (emphasis original). If the noncitizen “does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, [ICE] may proceed with removal to the country identified on the notice.” *Id.* at 2.

B. Argument: Petitioner meets all Winter factors

22. To obtain a TRO, a petitioner “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve “substantially identical” analysis). A “variant[] of the same standard” is the “sliding scale”: “if a

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1 plaintiff can only show that there are ‘serious questions going to the merits—a
 2 lesser showing than likelihood of success on the merits—then a preliminary
 3 injunction may still issue if the balance of hardships tips sharply in the plaintiff’s
 4 favor, and the other two Winter factors are satisfied.” Immigrant Defenders Law
 5 Center v. Noem, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks
 6 omitted). Under this approach, the four Winter elements are “balanced, so that a
 7 stronger showing of one element may offset a weaker showing of another.” All.
 8 for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may
 9 be granted where there are “‘serious questions going to the merits’ and a hardship
 10 balance. . . tips sharply toward the plaintiff,” and so long as the other Winter factors
 11 are met.

12 23. Here, this Court should issue a temporary restraining order because “immediate
 13 and irreparable injury . . . or damage” is occurring and will continue in the absence
 14 of an order. Fed. R. Civ. P. 65(b). This Court should order Petitioner’s release and
 15 enjoin removal to a third country with inadequate notice and opportunity to be
 16 heard.

17 **A. Petitioner is likely to succeed on the merits, or at a minimum, raises**
 18 **serious merits questions.**

19 **24. Respondents blatantly disregard instant Petition and transferred**
 20 **Petitioner while it’s pending, and yet plan to deport Petitioner to Vietnam,**
 21 **NOW, May 1, 2026, while she has a withholding from Vietnam.**

22
 23
 24 25. As such, Petitioner respectfully asks this Court to maintain status quo and
 25 transfer the Petitioner to Otay Mesa Detention Center in California, or in the
 26 alternative, grant Petitioner’s Petition for Writ of Habeas Corpus and order
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1 immediate release to avoid unreasonable and prejudicial delays and Respondent's
2 tactics to delay the process in bad faith.

3 26. Despite being represented and pending appeal, neither Petitioner nor Petitioner's
4 counsel were provided a notice of Respondents' intent to remove her from the
5 United States.

6 27. As such, Petitioner faces immediate irreparable harm: removal from the United
7 States to Vietnam, for which she was granted withholding of removal.

8 28. The requested temporary restraining order ("TRO") would preserve the status quo
9 while Petitioner litigates these claims under this Court's judgment, by prohibiting
10 the government from moving Petitioner out of the country during the pendency
11 of this litigation, potentially depriving this Court of jurisdiction, and by providing
12 specific forms of due process to which Petitioner is entitled during her threatened
13 third-country removal.

14 29. Petitioner has thus far not been notified regarding his rights to seek withholding
15 of removal or Convention Against Torture relief, and he has not been informed if
16 she will have an opportunity to be heard. Under current ICE policy, he will not
17 have that opportunity.

18 **B. Petitioner will suffer irreparable harm absent injunctive relief.**

19
20 30. Petitioner also meets the second factor, irreparable harm. "It is well established
21 that the deprivation of constitutional rights 'unquestionably constitutes
22 irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
23 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the "alleged
24 deprivation of a constitutional right is involved, most courts hold that no further
25 showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d
26 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal*
27 *Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit has
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1 specifically recognized the “irreparable harm” created by the likelihood of being
2 “unconstitutionally detained for an indeterminate period of time” in immigration
3 detention. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

4 31. Further, Petitioner’s abrupt removal to unknown country without sufficient time
5 to investigate whether she will be persecuted or tortured there could easily result
6 in irreparable harm.

7 **C. Petitioner will give the government notice of this TRO motion immediately.**

8
9 32. Counsel will immediately serve a copy of this TRO on Respondents’ counsel
10 after filing.

11 33. Additionally, Petitioner requests that this TRO remain in place until the petition
12 for writ of habeas corpus is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause
13 exists, because the same considerations will continue to warrant injunctive relief
14 throughout this post-judgment litigation. See *In re Habeas Corpus Cases*, 216
15 F.R.D. 52 (E.D.N.Y. 2003).

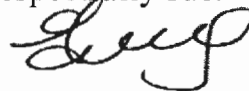
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17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner requests that the Court:

- 19 1) Preserve jurisdiction over this matter;
20 2) Order Responds transfer Petitioner back to this Cour’s jurisdiction;
21 3) Order that Respondents must not deport Petitioner from the United States
22 pending the result of instant Petition for Writ of Habeas Corpus.

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24 DATED: May 1, 2026

Respectfully submitted



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27 Naira Zohrabyan
28 Attorney for Petitioner

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